

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code sections 455B.105(11), 455B.173, 455B.186 and 455B.197, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 60, “Scope of Title—Definitions—Forms—Rules of Practice,” Chapter 64, “Wastewater Construction and Operation Permits,” and Chapter 66, “Pesticide Application to Waters,” Iowa Administrative Code.

The purpose of this rule making is to allow for the use of a new General Permit (No. 7) to authorize discharge of biological pesticides and chemical pesticides which leave a residue to waters of the United States, as required by U.S. Sixth Circuit Court of Appeals in their decision on January 7, 2009. This decision vacated the U.S. EPA’s final rule exempting pesticides applied in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) from the Clean Water Act (CWA) permitting requirements. The states and EPA have until April 9, 2011, to issue final general NPDES permits for pesticide applications.

Coverage under the draft NPDES Pesticides General Permit No. 7 (PGP) will be required for the application of: (1) biological pesticides whether or not they leave a residue, and (2) chemical pesticides which leave a residue (hereinafter collectively “pesticides”) that result in residue discharges to waters of the United States. Applicable pesticide applications include those for control of aquatic nuisance insects; weeds, algae, and bacteria or fish parasites; aquatic nuisance animals; and forest canopy pests. Irrigation return flows and agricultural runoff are not covered under the PGP as they are specifically exempted from the CWA.

The draft permit requires all operators to implement Best Management Practices (BMPs) to minimize discharges resulting from pesticide applications. These BMPs include following label instructions, conducting regular equipment maintenance, and visually monitoring application sites when possible. Larger applicators will have additional requirements, including the submittal of a Notice of Intent (NOI) for coverage under the permit, the submittal of annual activity reports, and the preparation of pesticide discharge management plans.

The Commission invites further discussion and comments to determine if the thresholds proposed in the draft PGP that establish which operators submit an NOI are appropriate. The proposed thresholds are based on U.S. EPA’s draft PGP and on comments from internal and external stakeholders. The Commission intends that only the largest pesticide applicators in the state will be required to submit NOIs for permit coverage. Specifically, the Commission is requesting information on how many operators in the state, including public entities, commercial applicators, and private applicators, will need to submit an NOI under the proposed thresholds. U.S. EPA has received comments on the thresholds proposed in its draft PGP, and the Commission will adjust the thresholds in Iowa’s draft PGP as appropriate based on information from stakeholders and on U.S. EPA’s final decision on the thresholds.

The Commission also invites further discussion and comments regarding the pesticide application activities covered, the appropriateness of the operator definition, and the reasonableness of the requirements for both NOI and non-NOI operators, as proposed in the draft PGP. Specifically, the Commission is requesting comments on whether more or less pesticide applications should be covered under the permit, if the operator definition is clear and reasonable, and if the requirements for NOI and non-NOI operators are overly burdensome or nonachievable.

The amendments to Chapters 60, 64, and 66 that are proposed herein to accompany the draft PGP found at [www.iowadnr.gov/water/npdes/pesticides.html](http://www.iowadnr.gov/water/npdes/pesticides.html) are summarized below.

Chapter 60:

(1) Add the new Notice of Intent, Notice of Termination, and Annual Reporting forms for the new General Permit No. 7.

Chapter 64:

(1) Exempt discharges of biological pesticides and chemical pesticide residues that do not reach the waters of the United States from the requirement to obtain a DNR operating permit.

(2) Require the issuance of a General Permit No. 7 (the PGP) for specific pesticide discharges that reach waters of the United States.

(3) Exempt pesticide discharges which do not meet the thresholds established in the PGP from the requirement to submit a Notice of Intent.

(4) Establish effective and expiration dates for the PGP.

(5) Exempt the PGP from the collection of permitting fees.

(6) Make other changes as needed to accommodate the issuance of the PGP.

Chapter 66:

(1) Add references to Chapter 64 and the PGP.

(2) Remove the existing requirements, the denial conditions, and the special conditions for the previous aquatic pesticides general permit. All of these requirements and conditions are included in the draft PGP.

Any interested person may file written comments on the proposed amendments on or before October 13, 2010. Written comments or questions regarding the proposed amendments should be directed to Courtney Cswercko, NPDES Section, Iowa Department of Natural Resources, 502 E. 9th Street, Des Moines, Iowa 50319; fax (515)281-8895; or E-mail [courtney.cswercko@dnr.iowa.gov](mailto:courtney.cswercko@dnr.iowa.gov).

Oral or written comments will also be accepted at six public hearings that will be held as follows:

September 28, 2010	6 p.m.	Atlantic Municipal Utilities Conference Room 15 West Third Street Atlantic, Iowa (Parking is available in the municipal lot south of the building.)
September 29, 2010	1 p.m.	Clear Lake City Hall Community Room 15 North Sixth Street Clear Lake, Iowa
September 30, 2010	11 a.m.	Storm Lake Public Library 609 Cayuga Street Storm Lake, Iowa
October 5, 2010	11 a.m.	Manchester Public Library 304 North Franklin Street Manchester, Iowa
October 6, 2010	11 a.m.	Washington Public Library 115 West Washington Street Washington, Iowa (The library requests that attendees park around the city park across the street from the library.)
October 7, 2010	6 p.m.	Wallace State Office Building Auditorium 502 E. Ninth Street Des Moines, Iowa

At each hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend a public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Department of Natural Resources to advise of specific needs.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code §17A.4(4) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

These amendments are intended to implement Iowa Code sections 455B.105(11), 455B.173, 455B.186 and 455B.197.

The following amendments are proposed.

ITEM 1. Adopt the following **new** paragraphs **60.3(2)“w”** and **“x”**:

w. Notice of Intent for Coverage Under NPDES General Permit No. 7, “Pesticide General Permit (PGP) for Point Source Discharges to Waters of the United States From the Application of Pesticides,” 542-XXXX.

x. Notice of Discontinuation From Coverage Under General Permit No. 7 542-XXXX.

ITEM 2. Reletter paragraph **60.3(3)“j”** as **60.3(3)“k.”**

ITEM 3. Adopt the following **new** paragraph **60.3(3)“j”**:

j. General Permit No. 7, “Pesticide General Permit (PGP) for Point Source Discharges to Waters of the United States From the Application of Pesticides,” Annual Monitoring Report 542-XXXX.

ITEM 4. Adopt the following **new** paragraph **64.3(1)“f”**:

f. Discharges from the application of biological pesticides and chemical pesticides which leave a residue where the discharge does not reach a water of the United States as defined in 40 CFR Part 122.2.

ITEM 5. Adopt the following **new** subparagraph **64.3(4)“b”(7)**:

(7) For the discharge of biological pesticides and chemical pesticides which leave a residue to a Water of the United States (as defined in 40 CFR Part 122.2) that meet any of the thresholds established in General Permit No. 7 after April X, 2011.

ITEM 6. Amend subparagraph **64.3(11)“b”(4)** as follows:

(4) Failure to submit such records and information as the director shall require both generally and as a condition of the ~~operation~~ permit in order to ensure compliance with the discharge conditions specified in the permit.

ITEM 7. Adopt the following **new** subparagraph **64.4(2)“a”(5)**:

(5) Discharges from the application of biological pesticides and chemical pesticides which leave a residue where the discharge will reach a water of the United States as defined in 40 CFR Part 122.2.

ITEM 8. Adopt the following **new** subparagraph **64.6(1)“a”(6)**:

(6) General Permit No. 7, “Pesticide General Permit (PGP) for Point Source Discharges to Waters of the United States From the Application of Pesticides,” Form 542-XXXX.

ITEM 9. Amend subparagraphs **64.6(1)“c”(2)** and **(3)** as follows:

(2) General ~~Permit~~ Permits No. 4, No. 5, No. 6, and No. 7. There are no public notification requirements for ~~this permit~~ these permits.

~~(3) General Permit No. 5. There are no public notification requirements for this permit.~~

ITEM 10. Amend paragraph **64.6(3)“c”** as follows:

c. The department finds that water well construction and well service discharge ~~is~~ are not managed in a manner consistent with the conditions specified in General Permit No. 6, ~~or~~

ITEM 11. Adopt the following **new** paragraph **64.6(3)“d”**:

d. The department finds that discharges from biological pesticides and chemical pesticides which leave a residue are not managed in a manner consistent with the conditions specified in General Permit No. 7.

ITEM 12. Amend subrule 64.8(2) as follows:

**64.8(2) *Renewal of coverage under a general permit.*** Coverage under a general permit will be renewed subject to the terms and conditions in paragraphs “a” to “d.”

a. If a permittee intends to continue an activity covered by a general permit beyond the expiration date of the general permit, the permittee must reapply and submit a complete Notice of Intent as follows: in accordance with 64.6(1).

~~(1) For storm water discharge associated with industrial activity, complete Notice of Intent requirements are listed in 64.6(1).~~

~~(2) Reserved.~~

b. No change.

c. A person holding a general permit is subject to the terms of the permit until it expires or a Notice of Discontinuation is submitted in accordance with 64.6(5). If the person holding a general permit continues the activity beyond the expiration date, the conditions of the expired general permit will remain in effect provided the permittee submits a complete Notice of Intent for coverage under a renewed or reissued general permit within 180 days after the expiration date of the expired general permit. If the person continues an activity for which the general permit has expired and the general permit has not been reissued or renewed, the discharge must be permitted with an individual NPDES permit according to the procedures in 64.3(4) "a."

d. No change.

ITEM 13. Adopt the following **new** subrule 64.15(7):

**64.15(7)** "Pesticide General Permit (PGP) for Point Source Discharges to Waters of the United States From the Application of Pesticides," NPDES General Permit No. 7, effective April X, 2011, to April X, 2016.

ITEM 14. Adopt the following **new** subrule 64.16(6):

**64.16(6)** "Pesticide General Permit (PGP) for Point Source Discharges to Waters of the United States From the Application of Pesticides," NPDES General Permit No. 7. No fees shall be assessed.

ITEM 15. Amend subrules 66.1(1) and 66.1(2) as follows:

**66.1(1) Prohibited discharges.** ~~Pesticides, including aquatic pesticides,~~ shall not be applied to any water of the state ~~designated in 567—subrule 61.3(5) as Class "A," Class "C," high quality, or high quality resource~~ except as provided in 66.1(2) and ~~567—Chapter 64.~~

**66.1(2) Allowable applications.** ~~Aquatic pesticides~~ Pesticides may be applied to any water of the state ~~designated in 567—subrule 61.3(5) as Class "A," Class "C," high quality, or high quality resource~~ provided that the applicator has a valid Category 5 ~~aquatic pest control certification from the department of agriculture and land stewardship pursuant to 21—paragraph 45.22(2)"e," and has received a permit from the department~~ United States, as defined in 40 CFR Part 122.2, in accordance with ~~these rules: 567—Chapter 64 and NPDES General Permit No. 7, "Pesticide General Permit (PGP) for Point Source Discharges to Waters of the United States From the Application of Pesticides."~~

ITEM 16. Rescind and reserve subrules **66.1(3)** to **66.1(5)**.